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Attorneys for Defendant  
POST-CONFIRMATION TRUST

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;	)	CIVIL NO. CV03-00385 SOM-LEK
	)	(Copyright)
	)	
Plaintiff,	)	<b>R. OLIVIA SAMAD'S</b>
	)	<b>DECLARATION IN SUPPORT OF</b>
vs.	)	<b>DEFENDANT PCT'S REPLY IN</b>
	)	<b>SUPPORT OF ITS MOTION FOR</b>
HAWAIIAN EXPRESS SERVICE,	)	<b>ATTORNEYS' FEES AND COSTS</b>
INC., et al.,	)	
	)	Conference: May 5, 2006
	)	Time: 2:00 p.m.
Defendants.	)	Judge: Magistrate Kobayashi
	)	Trial Date: February 28, 2006

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**DECLARATION OF R. OLIVIA SAMAD IN SUPPORT OF DEFENDANT  
PCT'S REPLY IN SUPPORT OF ITS MOTION FOR ATTORNEYS'  
FEES AND COSTS**

I, R. Olivia Samad, declare that:

1. I am an associate at Kirkland & Ellis, LLP, and one of the attorneys representing the Defendant Fleming (now the Post Confirmation Trust ("PCT")) in this case.

2. I am licensed to practice law in the State of California (SBN 228611) and have been admitted pro hac vice in this case.

3. I make this declaration based on my personal knowledge and belief. I know the following to be true through my work on this case. If called upon to do so I could and would competently testify as follows.

4. The January trial date was delayed to February 28, 2006 to allow the plaintiff time to review Guidance materials that he claimed in open court contained the "motherlode" of damages information. After a month's delay, the plaintiff never supplemented his damage analysis.

5. Recently, plaintiff's counsel contacted Fleming's banks and threatened to sue them under a theory that they are liable as controlling investors for contributing to Fleming's copyright infringement.

6. Attached as Exhibit “ZZ” is a true and correct copy of Plaintiff Wayne Berry’s Motion for Summary Judgment Against all Defendants dated April 20, 2005.

7. Attached as Exhibit “AAA” is a true and correct copy of an E-mail from Timothy Hogan to Damian Capozzola dated July 10, 2003.

8. Attached as Exhibit “BBB” is a true and correct copy of Fleming’s Motion for Immediate and Preliminary Injunctive Relief filed in the United States Bankruptcy Court for the District of Delaware, dated August 1, 2003.

9. Attached as Exhibit “CCC” is a true and correct copy of Parties Jointly Proposed Order Clarifying Order on Motion of Wayne Berry for An Order Granting Relief from the Automatic Stay or, in the Alternative, Relief from the Discharge and Permanent Injunction Provisions of Debtors’ and Official Committee of Unsecured Creditors’ Third Amended and Revised Joint Plan of Reorganization of Fleming Companies, Inc. and Its Filing Subsidiaries Under Chapter 11 of the United States Bankruptcy Code executed and dated August 13, 2004.

10. Attached as Exhibit “DDD” is a true and correct copy of excerpts from Plaintiff Wayne Berry’s Answers to Post-Confirmation Trust for Fleming

Companies, Inc.'s Second Set of Interrogatories to Plaintiff Wayne Berry dated April 22, 2005.

11. Attached as Exhibit "EEE" is a true and correct copy of an E-mail from Damian Capozzola to Timothy Hogan dated May 3, 2005.

12. Attached as Exhibit "FFF" is a true and correct copy of excerpts from CourtExpress: Legal Billing Report, Vol. 7, No. 3, Dec. 2005 (RIS Legal Services, Inc.). CourtExpress: Legal Billing Report is a comparative listing of hourly rates by attorney, firm, year of admittance and region. It contains eleven regional reports including California, Chicago, and International. Law firms use the report as an analytical tool in determining and setting the billable rates for their attorneys. It is issued three times a year and includes actual rates.

13. Attached as Exhibit "GGG" is a true and correct copy of excerpts from CourtExpress: Legal Billing Report, Vol. 7, No. 2, August 2005 (RIS Legal Services, Inc.).

14. Attached as Exhibit "HHH" is a true and correct copy of excerpts from the Transcript of Proceedings before the Honorable Susan Oki Mollway dated October 11, 2005.

15. Attached as Exhibit “III” is a true and correct copy of excerpts from Order Denying Defendants’ Motions for Summary Judgment; Order Affirming Magistrate Judge’s Adoption of Discovery Master’s Order Regarding F-1 Program Materials dated October 21, 2005.

16. Attached as Exhibit “JJJ” is a true and correct copy of a letter from Timothy Hogan to Discovery Master, Clyde Matsui dated November 4, 2005.

17. Attached as Exhibit “KKK” is a true and correct copy of a letter from Eric Liebeler to Discovery Master, Clyde Matsui dated February 4, 2005.

18. Attached as Exhibit “LLL” is a true and correct copy of Discovery Master Clyde Matsui’s Protective Order dated April 12, 2005.

19. Attached as Exhibit “MMM” is a true and correct copy of an Email from Timothy Hogan to Damian Capozzola dated August 11, 2005.

20. Attached as Exhibit “NNN” is a true and correct copy of an Email from Timothy Hogan to Victor Limongelli, Rex Fujicahku, Damian Capozzola, Eric Liebeler and Lex Smith dated October 31, 2005.

21. Attached as Exhibit “OOO” is a true and correct copy of a letter from Timothy Hogan to Discovery Master, Clyde Matsui dated November 4, 2005.

22. Attached as Exhibit “PPP” is a true and correct copy of the Order Denying Plaintiff’s Request for F-1 Program Materials, executed by Discovery Master Clyde Matsui, dated August 29, 2005.

23. Attached as Exhibit “QQQ” is a true and correct copy of an Email from Timothy Hogan to Damian Capozzola dated September 14, 2005.

24. Attached as Exhibit “RRR” is a true and correct copy of an Email from Timothy Hogan to Damian Capozzola, Lex Smith, Lyle Hosoda and Michael Baumann dated March 28, 2006.

25. Attached as Exhibit “SSS” are true and correct copies of excerpts from six Court Orders Denying Plaintiff’s Requests for Preliminary Injunction.

26. Attached as Exhibit “TTT” is a true and correct copy of an Email from Timothy Hogan to Lex Smith, Karen Fine, Lyle Hosoda Eric Liebeler, Robert Hertzberg, Richard Wynne, Melissa Dulac, Rick Cobb and Damian Capozzola dated September 14, 2004.

27. Attached as Exhibit “UUU” is a true and correct copy of an Email from Timothy Hogan to Eric Liebeler dated July 12, 2005.

I declare under penalty of perjury that the statements made herein are true and correct to the best of my knowledge, information and belief in Los Angeles, California, on May 4, 2006.

  
R. Olivia Samad